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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,241	01/31/2001	John C. Molander	8409	6142

27752 7590 12/23/2003

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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 12/23/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/773,241

Applicant(s)

MOLANDER ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

Claim 1 is objected to because of the following informalities: the claim recites "the interior region" in paragraph b and this limitation lacks antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 3, 5 – 10, 14 and 16 – 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Aledo et al. (US 4,850,988).

As to claim 1, Aledo discloses a disposable article comprising a containment assembly (Figure 3 member 22) longitudinal edges, at least one side panel carried by the containment assembly (Figure 3 members 15 and 16), and extending outwardly, the at least one side panel including an inner region having at least one discontinuity limited to the interior region (Figure 3 member 18) for dividing a tensile force applied to the at least one side panel into a waist-directing force and a leg-directing force (col. 3 lines 44-54; col. 4 lines 10-17) and

a single fastener for releasable engagement of the at least one side panel with a surface of the containment assembly adjacent the second end edge of the disposable article for retaining the disposable article in an operative position on the body of the wearer, wherein pulling laterally outward on the single fastener transmits a tensile force into the waist directing force and the leg directing force as set forth in figures 1 – 2.

As to claim 2, Aledo discloses a disposable article wherein at least one side panel further includes a waist region and leg region separated thereof by the at least one discontinuity (Figure 3 member 18), the waist region is configured to transmit the waist-directing form, and the leg region is configured to transmit the leg-directing force (col. 4 lines 10-17).

As to claim 3, Aledo discloses a disposable article wherein the leg region and the waist region diverge from each other in a direction from an outer panel of the side panel toward a longitudinal centerline of the containment assembly (Figure 2 side panels, not labeled but are shown as diverging outwardly).

As to claim 5, Aledo discloses a disposable article wherein the waist region has a greater width than the leg region (Figure 1 and 2 where the areas 15, 19, 16 are extending further than area 13).

As to claim 6, Aledo discloses a disposable article wherein at least one continuity is defined by at least one cut line. (Figure 2 member 18).

As to claim 7, Aledo discloses a disposable article wherein at least one cut line is rectilinear (Figure 3 member 17).

As to claim 8, Aledo discloses a disposable article wherein at least one cut line is disposed substantially parallel with a first lateral edge of the side panel (Figure 3 member 17 parallel with waist edge).

As to claim 9, Aledo discloses a disposable article wherein at least one discontinuity includes at least one opening. (Figure 3 members 17 at end edge).

As to claim 10, Aledo discloses a disposable article wherein at least one opening is defined by a substantially triangular open area or a substantially rectangular open area or a substantially trapezoidal open area (Figure 3 members 17 and 18 make up a substantially triangular open area).

As to claim 14, Aledo discloses a disposable article wherein at least one cut line is curvilinear (Figure 3 member 18).

As to claims 16 and 17, Aledo discloses a disposable article wherein the waist-directing force in the waist region of the side panel extends at an angle ranging from about 0 to about 45° relative to a lateral centerline of the disposable article, and wherein the leg-directing force in the leg region of the side panel extends at an angle ranging from about 10 to about 35° relative to the lateral centerline of the disposable article; wherein the waist-directing force in the waist region of the side panel extends at an angle ranging from about 10 to about 150° relative to a lateral centerline of the disposable article, and wherein the leg-directing force in the leg region of the side panel extends at an angle ranging from about 20 to about 300° relative to the lateral centerline of the disposable article. (Figures 1, 2, and 3 members 15, 16).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 4, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aledo et al. (US 4,850,988).

As to claims 4, 18, and 19, Aledo discloses a disposable article with elastic extensibility in the waist and leg areas (Figure 1 members 13 and 14), but fails to disclose specifically wherein the waist region has an extensibility varying from about 5g/mm to about 50 g/mm and the leg region has an extensibility varying from about 1 g/mm to about 30 g/mm; wherein the side panel has an

Art Unit: 3761

extensibility ranging from about 1 g/mm to about 50 g/mm; wherein the side panel is elastic and has an elasticity of at least about 5%. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the waist and leg elasticity with specific parameters, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claims 11 – 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aledo in view of Zelazoski (US 5,536,555).

As to claims 11-13, 15, Aledo discloses a disposable garment but fails to disclose wherein at least one discontinuity is defined by a plurality of cut lines; wherein a plurality of cut lines includes three spaced cut lines; wherein a first cut line extends substantially parallel to a lateral centerline of the side panel, a second cut line extends substantially parallel to the first lateral edge of the side panel, and a third cut line extends substantially parallel to a second lateral edge of the side panel; wherein the plurality of cut lines is disposed to define a substantially triangular array of spaced, curvilinear cut lines. However Zelazoski makes such a disclosure (Abstract; Figures 1, 2, 5, 6, 7, 8, 9). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Aledo to incorporate the design of Zelazoski since Zelazoski suggests the laminate may be used for disposable garments (Zelazoski col. 3 lines 30 – 35).

Response to Arguments

Applicant's arguments filed June 12, 2003 have been fully considered but they are not persuasive.

In response to the applicant's argument that Aledo requires four separate adjustments while the claimed invention relies on a single fastener, the examiner contends that the claim 1 recites an article "comprising" a number of elements and reminds the applicant that "comprising" is considered open ended language which may encompass one fastener or more than one fastener.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a discontinuity limited to the interior surface of at least one side panel) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The applicant has amended the claim to recite a discontinuity limited to the interior region. As previously noted, there is no antecedent basis for an interior region. Further, the applicant's arguments are directed to an interior surface, which is a limitation that has never been claimed so it is somewhat unclear what the applicant intends to claim as an invention. In the event that the applicant intended the discontinuity to be limited to an inner region, the examiner contends that the entire portion shown by Aledo may be considered an inner region.

Art Unit: 3761

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art to modify Aledo by providing the laminate of Zelazoski because the quilted film laminate provides good intake of liquids and resistance to rewet as taught by Zelazoski in col. 2, lines 35 – 48.

Additionally, Aledo acknowledges the inclusion of the covering as a part of the closure system in col. 1, lines 50 – 60.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory

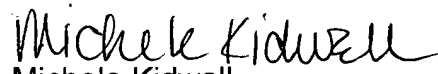
Art Unit: 3761


period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone number for the organization where this application or proceeding is assigned is 703-305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Michele Kidwell
December 20, 2003


GLENN K. DAWSON
PRIMARY EXAMINER